license modification, notices of completion of construction and similar actions. This fee should be extended to applications for modification for local SMR systems as well. Such a distinction between applications for new stations and requests for modification of existing licenses would discourage speculation but would not impose burdens on licensees already operating.

2. Mutually Exclusive Applications/Competitive Bidding/Amendment of Applications and License Modification

Applications for Part 90 services are generally accepted today on a "first come, first served" basis. Under Part 22, competing applications may be filed after the submission of an initial application by another entity. Similarly, under common carrier regulations, major amendments to pending applications are treated as new applications and are subject to the 30-day Public Notice period and the submission of petitions to deny. The Commission asks for comments on the type of filing procedures that should be applicable to current Part 90 licensees that are reclassified as CMRS.

The Company supports retention of the first come, first served process for determining mutual exclusivity in existing services. Permitting competitive applications to be filed within 30 days after the submission of an initial application, whether for a new station or based upon a proposed major modification to an existing station will only encourage speculation and make it more difficult for legitimate providers to seek authorization for locations where they intend to offer service. Unless a mutually

exclusive application is submitted on the same day for a CMRS station, the Commission should grant the initial application after the applicable Public Notice period.

The Company appreciates that there may be public policy considerations that mandate the acceptance of applications for longer periods when a new service is initiated.[18/] However, even in those instances, the Company supports the use of brief filing windows. Any applications that are not mutually exclusive, filed within the brief filing window, should be granted after the 30-day Public Notice period. Applications submitted during that period which are mutually exclusive would be subject to competitive bidding procedures.

Under the Company's formulation, it would be unlikely that applications for modification or applications for new stations in an existing service would be subject to competitive bidding procedures. This situation would occur only if two providers submitted applications on the same day which caused their respective provision of service to be considered mutually exclusive.

The Company recommends, therefore, that first come, first served procedures continue to be employed for 800 MHz and 220 MHz station, where spectrum is licensed or available across the

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[18/] Where spectrum is available for the first time in a geographic area, the Company would consider that the Commission has provided for a new service opportunity. Accordingly, it expects that 900 MHz "Phase II" applications would be subject to rules for new services.

country today.[19/] Where spectrum is made available for the first time, as 900 MHz SMR spectrum will be in many areas, a brief filing window to determine mutually exclusive applications should be used.

In the case of 220 MHz applications, the Commission has frozen the acceptance of applications for modification and new facilities. Prior to reopening the window for the submission of applications for new stations, E.F. Johnson urges the Commission to permit existing licensees to request modification of their licenses to permit relocation of transmitter facilities. Because the Commission has not permitted the submission of applications for modification, many licensees are required to operate their stations at locations other than where they are licensed, pursuant to Commission grant of Special Temporary Authority ("STA"). If the Commission accepts applications for new stations at the same time as applications for modification, these licensees may be prevented from securing permanent licenses that will enable them to continue operations at the site covered by the STA. Accordingly, the Commission should first permit the submission of applications for modification by existing licensees, and then permit the submission of applications for new facilities.

[19/] If the Commission changes its licensing procedures for 800 MHz spectrum to permit, for example, applicants to apply for large spectrum blocks, the Company expects that the first come, first served procedure would not apply.

3. Conditional and Special Temporary Authority

Currently, Part 90 applicants can construct their facilities prior to receiving a station authorization, so long as they do not operate their stations until after they receive an FCC authorization. Common carriers require a construction permit to begin construction. Additionally, the STA rules for common carriers are considerably more stringent than the STA rules for private systems. The Commission asks whether the Part 22 rules for construction prior to authorization should be extended to Part 90 CMRS providers. Alternatively, the Commission asks whether all CMRS licensees should be able to construct prior to authorization. The Commission also proposes to adopt STA procedures for Part 90 CMRS licensees that are similar to those that currently apply to common carriers.

E.F. Johnson supports the Commission's proposal that all CMRS licensees be permitted to commence construction prior to receiving an authorization. This procedure will permit licensees to provide service to the public immediately after they receive a license. If environmental and aviation hazard rules are observed, there is no public interest served by prohibiting the construction of communications facilities. Applicants should be able to make the business decision as to whether they wish to construct facilities in the absence of an authorization, knowing that they may not ultimately receive a license.

The Commission should liberally interpret the requirements of Section 309(f) of the Communications Act to permit grant of

STA under conditions as similar as possible to those that exist today for Part 90 licensees and applicants. STA is now routinely granted in instances where, prior to construction, a licensee determines that its proposed tower site is inappropriate or unavailable.[20/] Because the processing of Part 90 applications require greater than six months, submission and processing of a subsequently filed application for modification is not feasible in order for licensees to meet the FCC-imposed one-year construction deadline. Should the Commission apply traditional common carrier standards to CMRS STA requests, many local SMR operators may lose their authorizations because of an inability to construct facilities in a timely fashion at an authorized site. Accordingly, the Commission must modify the current application processing requirements or liberalize the common carrier STA standard.

4. Combined PMRS and CMRS Operation

When an applicant proposes to provide commercial and non-commercial service under the same license, the FCC proposes to treat the application as a request to provide CMRS service, and subject the applicant to Public Notice, petitions to deny and the additional procedural requirements for CMRS.

PMRS licensees who also offer CMRS should not be hampered in their ability to satisfy internal communications requirements

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[20/] Under Part 90, there is no requirement for an applicant to secure a commitment permitting it to use the proposed tower site prior to submission of application or grant of an authorization.

simply because they offer incidental CMRS service. Accordingly, the company urges the Commission to adopt procedures that would allow more expeditious action on the PMRS portion of the application. Because STA requests for PMRS licensees and applicants may be judged more liberally than similar requests by common carriers, the Commission should permit the initiation of the PMRS portion of a combined operation under STA while it considers the CMRS elements in the context of the formal application.

5. Conversion to CMRS Status by Existing Part 90 Licensees

In order to ensure the accuracy of its data base, the Commission proposes that within 90 days of the time that new CMRS rules go into effect, Part 90 licensees must request changes to their licenses to reflect actual operation. Once licensees make those changes, the Commission will automatically convert any license under Part 90 that is authorized to permit interconnected service to the public for profit to CMRS status.

Because licenses issued prior to August 10, 1993 may continue to operate under current rules, the Company questions why these entities must be reclassified within 90 days of the time the new rules go into effect. In order to reduce the administrative burden on the Commission, the FCC should require immediate reclassification only for those licensees that received authorizations after the August 10, 1993 grandfather period. All other licensees should be permitted to modify their

authorizations within one year of the effective date of the new CMRS rules.

Moreover, with respect to 220 MHz services, the Commission will not be able to, merely from inspection of the license classification, determine if the licensee is a CMRS provider. 220 MHz licenses were issued without regard to whether the licensee would provide service for profit. Accordingly, the Commission must inquire whether each 220 MHz local licensee intends to offer service for profit.[21/]

III. CONCLUSIONS

Clearly, implementation of the new regulatory scheme proposed in the Commission's Further Notice will have a profound impact on many of the current 800 MHz, 900 MHz and 220 MHz licensees. As reflected in these Comments, E.F. Johnson is extremely interested in ensuring that the Commission's actions and the resulting regulations in this proceeding are consistent with the Congressional mandate that the new regulatory structure accord symmetrical regulatory treatment for competing mobile communications. In this regard, the Commission's analysis to determine which services are substantially similar must include close examination of the technical, operational and other

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21/ The Company recognizes that in order to submit an application, each licensee was required to state its eligibility. However, this statement did not result in a distinction in licensee classification. Accordingly, there is no difference in a license issued to an entity wishing to provide commercial service and one wishing to satisfy internal communications requirements.

differences -- many of which E.F. Johnson has described above -- that distinguish those private radio services which will soon be reclassified as CMRS from the various mobile common carrier services. To the extent that the Commission acknowledges these differences and endeavors to adopt appropriate regulations that provide for the similar treatment of services where such services are determined to be substantially similar, E.F. Johnson supports the instant proceeding and the Commission's efforts towards the achievement of that end.

WHEREFORE, THE PREMISES CONSIDERED, the E.F. Johnson Company hereby submits the foregoing Comments and urges the Commission to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

THE E.F. JOHNSON COMPANY

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